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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

DAN A. NILSON,

Plaintiff and Respondent,

v.

REBECCA NILSON et al.,

Defendants and Respondents;

HENRY NILSON,

Defendant and Appellant.

D072222

(Super. Ct. No. ECU08969)

APPEAL from a judgment of the Superior Court of Imperial County,

Jeffrey Bruce Jones, Judge. Affirmed.

Law Office of Philip J. Krum, Jr., Philip J. Krum, Jr. for Defendant and Appellant
Henry Nilson.

Sandler, Lasry, Laube, Byer & Valdez, Jeffrey M. Byer and Thomas R. Laube for
Defendant and Respondent Joseph Ryan Rothfleisch, Personal Representative of Rebecca
Nilson Trust.

Henry Nilson (Henry) appeals from a judgment that determined ownership of Skona, Inc. (Skona) and excluded him from the ownership.¹ After Henry's brother Dan filed a complaint seeking determination of the stock ownership of Skona, the court held a bench trial and found, on the basis of waiver and estoppel, that Henry relinquished his ownership in Skona nearly two decades ago. Although Henry had held one-quarter ownership in Skona at incorporation in 1982 (along with Dan, their father Charles, and their then-brother-in-law Joe Rothfleisch), he relinquished it in 1998 when he sent a letter separating himself from the family business, after which he took no action to involve himself in Skona's business. Having reviewed the record and applicable law, we find that substantial evidence supports the court's judgment.

FACTUAL AND PROCEDURAL BACKGROUND

A. *Skona's Formation and Operation*

Charles Nilson built a family farming business in the Imperial Valley over several decades. He and his family organized their business as a partnership, Nilson Associates (the partnership), owned in four equal shares by Charles, his sons Dan and Henry, and his daughter Rebecca's then-husband Joe Rothfleisch. In 1982, Charles decided to incorporate a new entity, Skona, to "protect against problems with liability" related to its farm equipment. The partnership, whose ownership structure exactly mirrored Skona's, initially capitalized Skona with two checks, one for \$16,000 in 1982 and another for

¹ Because several family members with the Nilson surname are among the parties and relevant to the proceedings, we will use first names for the Nilsons, intending no disrespect.

\$10,000 that same year, both of which were divided and proportionally booked as draws against each partner's capital account. Charles managed Skona's accounting and tax work. Henry assisted with the books and records of the corporation. He also helped maintain Skona's farm equipment that was used by the partnership in its farming operations.

Skona never held board meetings or shareholder meetings, created corporate minutes, issued share certificates, or hired employees. Testimony indicated that it never observed corporate formalities and existed nearly exclusively to own the equipment that the partnership used in its farming operations. Skona, for example, did not have credit contracts with local repair companies; instead, the partnership entered into those contracts as the entity actually paying for the repairs.

B. *Henry's Dissociation from the Family Business*

In the late 1990s, Henry's relationship with his family deteriorated amid accusations that he assaulted his sister Rebecca. In the wake of these allegations, Henry sent an impassioned letter to Rebecca and other family members in or around October 1997 airing several grievances and announcing his intention to exit the family business at the end of the calendar year. The letter begins, "Regarding a lie that has recently crossed your lips," lists several of Henry's allegations against Rebecca relating to mismanagement of the family business, and concludes, "AS OF JANUARY 1, 1998, I will not be your partner."

After January 1, 1998, Henry stopped working for Skona and cut any ties that he had had to it. He never again worked on Skona's equipment; visited the office where

Skona kept its records; contributed any capital; discussed whether funds should be used to purchase new equipment; or discussed Skona in any context with Dan. Furthermore, after 1998 Skona's "Statement by Domestic Stock Corporation," which it periodically filed with the California Secretary of State, no longer identified Henry as a director or officer. In November 2004, Charles signed a "Statement of Information" form that did not include Henry as either an officer or director of Skona. And in December 2004, Skona opened a bank account with all of the partners in the partnership included as authorized signers, except for Henry. According to Dan, Henry did nothing after 1998 to indicate he thought he was still an owner of Skona. Likewise, Dan never saw anyone else take any action after 1998 suggesting Henry was still an owner of Skona.

C. *Procedural History*

In October 2015, Dan filed a complaint seeking determination of stock ownership of Skona.² He named as defendants his sister Rebecca, who died before trial, his brother Henry, and his mother Louise as Trustee for the Charles and Louise Nilson Family Trust (Family Trust).³ The complaint alleged that at the time of incorporation, Skona was owned in four equal shares by (1) Dan, (2) Henry, (3) Charles (currently held by Louise as trustee for the Family Trust), and (4) Rebecca and her former husband Joe Rothfleisch as their community property. The complaint further alleged that in January 2010,

² Dan also sought to remove Rebecca as a director pursuant to Corporations Code section 709. Rebecca died before trial, and the court dismissed this claim as moot.

³ Dan also named Samuel Joe Rothfleisch, Rebecca's ex-husband, as a defendant, but Rothfleisch was dismissed before being required to appear.

Rebecca filed a Statement of Information with the Secretary of State indicating the removal of Joe Rothfleisch and Henry as directors and the addition of Rebecca.

The action proceeded to a one-day bench trial. After hearing live testimony by Dan and Henry, and video testimony by Rebecca and Louise, the court issued a tentative decision finding the ownership and voting rights in Skona as follows: Dan held 33 and one-third percent of 100 shares; Louise held 33 and one-third percent of 100 shares as trustee of the Family Trust; and Joe Rothfleisch held 33 and one-third percent of 100 shares as Rebecca's personal representative and trustee of the Rebecca Nilson Family Trust. The court found there were no other owners of Skona, or individuals or entities entitled to voting rights. The court also determined that while Henry had an ownership interest in Skona at incorporation, he intentionally relinquished that ownership when he sent the letter notifying his family that he was leaving the family business on January 1, 1998. It noted that after sending the letter, "Henry made no efforts to assert any interest in Skona or Nilson Associates. . . . Henry's conduct (or lack thereof) overwhelmingly indicates that he intended to abandon his interest in Nilson Associates *and* Skona." (Italics added.)

On the issue of estoppel, the court concluded that "Henry and his partners actually believed and intended that Skona be the property of the partnership." According to the court, Henry "knew that the other partners understood he was abandoning his interest in Skona, and intended that they rely on that belief. They did so believe, and based on that belief continued to invest labor and capital." Thus, on the basis of both waiver and estoppel, the court found that Henry relinquished ownership in Skona. No party objected

to the court's tentative decision or requested a statement of decision. In June 2017, the court entered judgment incorporating the tentative decision.

DISCUSSION

A. *Legal Standards*

Where, as here, a party fails to request a statement of decision, the doctrine of implied findings applies, and we presume that the "trial court made all factual findings necessary to support the judgment for which substantial evidence exists in the record." (*Shaw v. County of Santa Cruz* (2008) 170 Cal.App.4th 229, 267.) Under this doctrine, "the necessary findings of ultimate facts will be implied and the only issue on appeal is whether the implied findings are supported by substantial evidence." (*Ibid.*)

Henry argues for de novo review on the grounds that the trial court improperly based its ruling on the alter ego doctrine. This argument is misplaced. The trial court discussed the close relationship between Skona and the partnership as part of its rationale for finding that when Henry sent his letter separating himself from the family business, which was primarily organized as a partnership, he also intended to relinquish his ownership rights in the corporate entity Skona. The trial court did not base its ruling on the alter ego doctrine, which instead operates to allow a court to pierce the corporate veil such that individual shareholders may be found personally liable for debts of the corporation.

Accordingly, our review is limited to whether substantial evidence supports the court's findings under the implied findings doctrine.

B. *Substantial Evidence Supports the Court's Findings Regarding Waiver*

"Waiver is the intentional relinquishment of a known right after knowledge of the facts." (*Roesch v. De Mota* (1944) 24 Cal.2d 563, 572.) It "may be implied through conduct manifesting an intention to waive." (*Gould v. Corinthian Colleges, Inc.* (2011) 192 Cal.App.4th 1176, 1179 (*Gould*).)

Substantial evidence supports the court's determination that Henry waived his ownership interest in Skona. Although he never expressly waived his rights, waiver may be implied for two reasons. First, Henry's letter cutting ties with the family business strongly implies an intention to waive his rights in Skona. Second, this interpretation of the letter is supported by considerable evidence that Henry completely separated himself from Skona after sending the letter.

Henry testified that he had no intention of waiving his interest in Skona, and emphasizes that his letter does not reference the corporation. While it is true that Henry's letter does not expressly waive ownership in Skona specifically, it nonetheless demonstrates a clear, full-throated intention to separate from the family business altogether. It is typed and hand-signed, styled as a "Notic [*sic*] of Intent" addressed both to Rebecca and to whom it may concern, and it lists several grievances Henry held against his sister, all of which revolve around her management and accounting practices. He "hate[s] with a passion [her] attitude to 'soft money', i.e. 'let the business deduct it'; he "resent[s] being coerced into deducting health insurance costs covering us and our children"; and he suggests that she "[e]xpect[s] everyone else to pay [her] way." After outlining his grievances and citing Bible passages from James and 1 Timothy to balance

the invective, Henry announced, "Therefore, AS OF JANUARY 1, 1998, I WILL NOT BE YOUR PARTNER." His use of the term "partner" was not necessarily intended in the technical sense, particularly given the trial court's express finding that family members "treated Skona assets as property of the partnership."

Moreover, between 1998 and the initiation of this litigation Henry took no action to involve himself in Skona, demonstrating that when he sent his letter cutting ties with the family business he intended to relinquish rights in Skona. For 18 years Henry did not provide labor or capital, did not attend any meetings, did not request information, did not receive any distributions or compensation, and never asked about Skona. Such omissions confirm what the letter strongly suggested, that Henry fully intended to abandon his interest in Skona. (See *Gould, supra*, 192 Cal.App.4th at p. 1179.)

To be sure, there is contrary evidence in the record, the strongest of which may be a document prepared by Louise's attorney in July 2015 separately listing as assets to be divided between her two trusts a "33.33% interest in Nilson Associates" and a "25% interest in Skona Inc." According to Henry, "[t]he 33.33% interest shows her understanding that Henry had waived his interest in the partnership. The 25% interest shows her understanding that Henry had not waived his interest in SKONA." Such modest circumstantial evidence, however, cannot overcome the great weight of evidence that Henry intended to waive his rights in the family business, Skona included, and acted accordingly. Our task is not to reweigh the evidence, but simply to determine whether there is sufficient evidence to support the trial court's decision.

C. *Substantial Evidence Supports the Court's Findings Regarding Estoppel*

The court also concluded that Henry was estopped from asserting an ownership interest in Skona. Estoppel applies when a party shows (1) a representation or concealment of material facts; (2) made with knowledge, actual or virtual, of the facts; (3) to a party ignorant, actually and permissibly, of the truth; (4) with the intention, actual or virtual, that the ignorant party act on it; and (5) the ignorant party relied on it. (*San Diego Municipal Credit Union v. Smith* (1986) 176 Cal.App.3d 919, 923.) The court found that "Henry and his partners actually believed and intended that Skona be the property of the partnership." It noted that Henry "knew that the other partners understood he was abandoning his interest in Skona, and intended that they rely on that belief. They did so believe, and based on that belief continued to invest labor and capital."

Henry argues there is insufficient evidence that Henry's partners in Skona (1) reasonably believed that when he sent his letter cutting ties with the family business, he intended to waive ownership in Skona, and (2) reasonably relied on this belief. As discussed, however, Henry's letter demonstrates a clear intention to cut ties with the family business, and it was plainly reasonable, based on the evidence of the close relationship between Skona and the partnership, for Henry's partners to believe that by cutting ties with the family business he intended to sever ties with both Skona and the

partnership. Reliance may be found in Henry's former partners' continued operation of the business and investment of capital and labor, without any help from Henry.⁴

Therefore, substantial evidence supports the court's findings regarding waiver and estoppel.

DISPOSITION

The judgment is affirmed. Respondent is entitled to costs on appeal.

DATO, J.

WE CONCUR:

O'ROURKE, Acting P. J.

GUERRERO, J.

⁴ Henry additionally argues that because the parties stipulated before trial to the ownership of Skona at incorporation (by Charles, Dan, Henry, and Joe Rothfleisch in four equal shares), the court could not find, contrary to the facts as stipulated, that Henry and his partners "actually believed and intended that SKONA be the property of the partnership." But both could be true. It would not be inconsistent to say that Charles, Dan, Henry, and Joe owned Skona as shareholders but believed (incorrectly) and intended that Skona be the property of the partnership.